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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

YMEDLA T. PATRICK,

Plaintiff and Appellant,

v.

JAMES TURNER,

Defendant and Appellant;

THADDEUS SMITH et al.,

Defendants and Respondents.

G037607

(Super. Ct. Nos. 03CC14826;
A228275)

ORDER MODIFYING OPINION
AND DENYING PETITIONS FOR
REHEARING; NO CHANGE IN
JUDGMENT

It is ordered that the opinion filed herein on October 22, 2008, be modified as follows:

On page 15, third paragraph, delete the sentence beginning with “If plaintiff has a community property interest” and replace it with the following sentence: “If plaintiff has a community property interest in the trust’s Alacer stock, then her husband, by directing the trustees to issue Alacer shares to plaintiff to satisfy her community property interest (if any), would not be giving plaintiff anything to which she is not already entitled.”

On page 15, third paragraph, after the sentence beginning with “Any community property interest she has,” insert the following sentence: “Transferring trust assets to satisfy an existing obligation is the antithesis of a *donative* transfer.”

On page 20, first section of the page, after the last sentence of the section ending with “Jay’s original investment, is community property,” insert the following sentence: “And the Trust directs the trustees to satisfy this community property interest by transferring Alacer stock to plaintiff.”

On page 21, line 9, delete the sentence beginning with “She allegedly has present and existing ownership” and replace it with the following sentence: “She allegedly has a present and existing interest in Alacer stock already — she does not need to do anything to trigger her interest.”

On page 21, first full paragraph, delete the sentence beginning with “Through her alleged community property interest” and replace it with the following sentence: “Through her alleged community property interest, plaintiff is already entitled to some of the Alacer stock held in the trust’s name.”

On page 21, footnote 9, delete the text and replace it with the following: “Patrick’s counsel aptly noted at oral argument plaintiff could have asserted her community property interest by filing a petition as an “interested person” asserting a claim to trust property. (Prob. Code, § 850, subd. (a)(3).) But plaintiff was not required to file such a petition because she seeks only a declaration of her community property interest, not a transfer of trust property. (See Prob. Code, § 17200.1 [“All proceedings concerning *the transfer of property of the trust* shall be conducted pursuant to the provisions of Part 19 (commencing with Section 850) of Division 2,” italics added].)”

On page 30, second full paragraph, delete the citation and the parenthetical insert beginning with “(*People v. Ex rel. Dept.*” and replace it with the following citation and parenthetical insert: “(*People ex rel. Dept. Pub. Wks. v. Clausen* (1967) 248 Cal.App.2d 770, 785 (*Clausen*) [“such granting of leave to amend [in an order sustaining

a demurrer] must be construed as permission to the pleader to amend the cause of action which he pleaded in the pleading to which the demurrer has been sustained”].)”

All petitions for rehearing are DENIED.

The modification does not change the judgment.

IKOLA, J.

WE CONCUR:

SILLS, P. J.

O’LEARY, J.